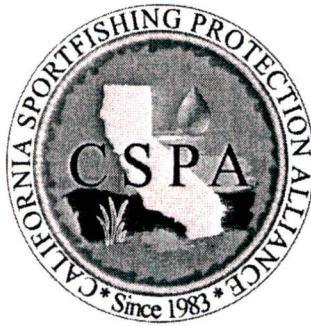


APR 30 2012



April 25, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jay Ramos, District Manager
Felipe Melchor, Facility Operator Contact
Eddie Pettit, Regional Board Communication Liaison
Elaina Smith, Facility Operator Contact
USA Waste of California, Inc., dba, Carmel Marina Corporation
11240 Commercial Parkway
Castroville, CA 95012

C T Corporation System, Agent for Service of Process
USA Waste of California, Inc.
818 W. Seventh Street
Los Angeles, CA 90017

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Messrs. Ramos, Melchor, Pettit and Ms. Smith:

I am writing on behalf of the California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act ("the Act") occurring at the USA Waste of California, Inc. waste transfer and recycling facility located at 11240 Commercial Parkway in Castroville, California ("the Facility"). USA Waste of California, Inc. is doing business at the Facility under the fictitious business name of Carmel Marina Corporation ("Carmel Marina"). The WDID identification number for the Facility is 327I017456.¹ CSPA is a non-profit public benefit corporation dedicated to the preservation, protection and defense of the environment, wildlife and natural resources of California waters and the Pacific Ocean. This letter is being sent to you as

¹ Part of Facility formerly operated under WDID 327I015253, which was terminated on January 28, 2010.

the responsible owner, officer, or operator of the Facility. Unless otherwise noted, USA Waste of California, Inc., Jay Ramos, Felipe Melchor, Eddie Pettit, and Elaina Smith shall hereinafter be collectively referred to as Carmel Marina.

This letter addresses Carmel Marina's unlawful discharges of pollutants from the Facility to the County of Monterey's storm water drainage system and Tembladero Slough, which then conveys storm water discharged from the Facility into the Salinas River, and then to the Pacific Ocean. This letter addresses the ongoing violations of the substantive and procedural requirements of the Clean Water Act and National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended by Order No. 97-03-DWQ ("General Permit" or "General Industrial Storm Water Permit").

Section 505(b) of the Clean Water Act provides that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("the EPA"), and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, USA Waste of California, Inc., Allied Waste Systems, Inc., Waste Management of California, Inc., Jay Ramos, Felipe Melchor, Eddie Pettit and Elaina Smith are hereby placed on formal notice by CSPA that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, CSPA intends to file suit in federal court against USA Waste of California, Inc., Jay Ramos, Felipe Melchor, Eddie Pettit and Elaina Smith under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more fully below.

I. Background.

Carmel Marina owns and operates a waste transfer and recycling facility located in Castroville, California. The Facility falls under Standard Industrial Classification ("SIC") Code 5093 ("Scrap Recycling Facilities"), 4953 ("Refuse Systems"), and 4212 ("Motor Freight Transportation and Warehousing"). The Facility is primarily used to receive, store, handle, recycle and transport waste and scrap materials. Other activities at the Facility include the use and storage of heavy machinery and motorized vehicles, including trucks used to haul materials to, from and within the Facility.

Carmel Marina collects and discharges storm water from its approximately 6.7-acre Facility through at least four (4) discharge points into the County of Monterey's storm water drainage system and Tembladero Slough. The storm water discharged by Carmel Marina then travels into the Salinas River, and finally into the Pacific Ocean.

The Tembladero Slough and Salinas River and its tributaries and the Pacific Ocean are waters of the United States within the meaning of the Clean Water Act.

The Central Coast Regional Water Quality Control Board ("Regional Board") has established water quality standards for waters in its region, in the "Water Quality Control Plan for the Central Coast Basin" ("Basin Plan"). The Basin Plan requires "[a]ll waters shall be maintained free of toxic substances in concentrations which are toxic to, or which produce detrimental physiological responses in, human, plant, animal, or aquatic life." The Basin Plan also requires "[t]he pH value shall neither be depressed below 6.5 nor raised above 8.3." *Id.* at III-5. Further, it prohibits the discharges of oil and grease, stating that "[w]aters shall not contain oils, greases, waxes, or other similar materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses." *Id.* at III-3.

The Basin Plan provides maximum contaminant levels ("MCLs") for organic concentrations and inorganic and fluoride concentrations, not to be exceeded in domestic or municipal supply. *Id.* at III-6 - III-7. It requires that water designated for use as domestic or municipal supply shall not exceed the following maximum contaminant levels: aluminum – 1.0 mg/L; arsenic - 0.05 mg/L; lead - 0.05 mg/L; and mercury - 0.002 mg/L. *Id.* at III-7. The EPA has also issued recommended water quality criterion MCLs, or Treatment Techniques, for mercury - 0.002 mg/L; lead – 0.015 mg/L; chromium – 0.1 mg/L; and, copper – 1.3 mg/L. The EPA has also issued a recommended water quality criterion for aluminum for freshwater aquatic life protection of 0.087 mg/L. In addition, the EPA has established a secondary MCL, consumer acceptance limit for aluminum - 0.05 mg/L to 0.2 mg/L and zinc - 5.0 mg/L. See <http://www.epa.gov/safewater/mcl.html>. Finally, the California Department of Health Services has established the following MCL, consumer acceptance levels: aluminum – 1 mg/L (primary) and 0.2 mg/L (secondary); chromium – 0.5 mg/L (primary); copper – 1.0 mg/L (secondary); iron – 0.3 mg/L; and zinc – 5.0 mg/L. See California Code of Regulations, title 22, §§ 64431, 64449.

The California Toxics Rule ("CTR"), issued by the EPA in 2000, establishes numeric receiving water limits for certain toxic pollutants in California surface waters. 40 CFR § 131.38. The CTR establishes the following numeric limits for freshwater surface waters: arsenic – 0.34 mg/L (maximum concentration) and 0.150 mg/L (continuous concentration); chromium (III) – 0.550 mg/L (maximum concentration) and 0.180 mg/L (continuous concentration); copper – 0.013 mg/L (maximum concentration) and 0.009 mg/L (continuous concentration); lead – 0.065 mg/L (maximum concentration) and 0.0025 mg/L (continuous concentration).

The Regional Board has identified waters of the Central Coast as failing to meet water quality standards for pollutant/stressors such as unknown toxicity, numerous pesticides, and mercury. See www.swrcb.ca.gov/water_issues/programs/tmdl/docs/-2002reg3303dlist.pdf. It identified that the Tembladero Slough fails to meet water

quality standards due to the pollutant/stressors chlorophyll-a, chlorpyrifos, diazinon, enterococcus, Escherichia coli, fecal coliform, nitrate, nutrients, pesticides, sediment toxicity, total coliform, turbidity and pH. It identified that the Salinas River fails to meet water quality standards due to the pollutant/stressors chlorophyll-a, chlorpyrifos, diazinon, Escherichia coli, fecal coliform, low dissolved oxygen, nitrate, sediment toxicity, turbidity, unknown toxicity and pH. Discharges of listed pollutants into an impaired surface water may be deemed a "contribution" to the exceedance of CTR, a water quality standard, and may indicate a failure on the part of a discharger to implement adequate storm water pollution control measures. *See Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 375 F.3d 913, 918 (9th Cir. 2004); *see also Waterkeepers Northern Cal. v. Ag Indus. Mfg., Inc.*, 2005 WL 2001037 at *3, 5 (E.D. Cal., Aug. 19, 2005) (finding that a discharger covered by the General Industrial Storm Water Permit was "subject to effluent limitation as to certain pollutants, including zinc, lead, copper, aluminum and lead" under the CTR).

The General Permit incorporates benchmark levels established by EPA as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT"). The following benchmarks have been established for pollutants discharged by Carmel Marina: iron – 1.0 mg/L; pH – 6.0 – 9.0 s.u.; oil & grease – 15 mg/L;; and, total suspended solids – 100.0 mg/L. The State Water Quality Control Board has also proposed adding a benchmark level for specific conductance - 200 µmhos/cm and total organic carbon – 110 mg/L. Additional EPA benchmark levels have been established for other parameters that CSPA believes are being discharged from the Facility, including but not limited to, aluminum – 0.75 mg/L; arsenic – 0.16854 mg/L; cadmium – 0.0159 mg/L; copper – 0.0636 mg/L; cyanide – 0.0636 mg/L; chemical oxygen demand – 120 mg/L; lead – 0.0816 mg/L; magnesium – 0.0636 mg/L; manganese – 1.0 mg/L; mercury – 0.0024 mg/L; silver – 0.0318 mg/L; and zinc – 0.117 mg/L.

II. Carmel Marina Is Violating the Act by Discharging Pollutants From the Facility to Waters of the United States.

Under the Act, it is unlawful to discharge pollutants from a "point source" to navigable waters without obtaining and complying with a permit governing the quantity and quality of discharges. *Trustees for Alaska v. EPA*, 749 F.2d 549, 553 (9th Cir. 1984). Section 301(a) of the Clean Water Act prohibits "the discharge of any pollutants by any person . . ." except as in compliance with, among other sections of the Act, Section 402, the NPDES permitting requirements. 33 U.S.C. § 1311(a). The duty to apply for a permit extends to "[a]ny person who discharges or proposes to discharge pollutants. . . ." 40 C.F.R. § 122.30(a).

The term "discharge of pollutants" means "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12). Pollutants are defined to include, among other examples, a variety of metals, chemical wastes, biological

materials, heat, rock, and sand discharged into water. 33 U.S.C. § 1362(6). A point source is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, [or] conduit . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14). An industrial facility that discharges pollutants into a navigable water is subject to regulation as a “point source” under the Clean Water Act. *Comm. to Save Mokelumne River v. East Bay Mun. Util. Dist.*, 13 F.3d 305, 308 (9th Cir. 1993). “Navigable waters” means “the waters of the United States.” 33 U.S.C. § 1362(7). Navigable waters under the Act include man-made waterbodies and any tributaries or waters adjacent to other waters of the United States. *See Headwaters, Inc. v Talent Irrigation Dist.*, 243 F.3d 526, 533 (9th Cir. 2001).

The Tembladero Slough, Salinas River and Pacific Ocean are waters of the United States. Accordingly, Carmel Marina’s discharges of storm water containing pollutants from the Facility are discharges to waters of the United States.

CSPA is informed and believes, and thereupon alleges, that Carmel Marina has discharged and continues to discharge pollutants from the Facility to waters of the United States every day that there has been or will be any measurable discharge of water from the Facility since April 25, 2007. Each discharge on each separate day is a separate violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These unlawful discharges are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Carmel Marina is subject to penalties for violations of the Act since April 25, 2007.

III. Pollutant Discharges in Violation of the NPDES Permit.

Carmel Marina has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. The General Permit prohibits any discharges of storm water associated with industrial activities that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, Oil & Grease (“O&G”), pH, biochemical oxygen demand (“BOD”), and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

Further, Discharge Prohibition A(1) of the General Permit provides: “Except as allowed in Special Conditions (D.1.) of this General Permit, materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States are prohibited. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.” Special Conditions D(1) of the

General Permit sets forth the conditions that must be met for any discharge of non-storm water to constitute an authorized non-storm water discharge.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

Based on its review of available public documents, CSPA is informed and believes: (1) that Carmel Marina continues to discharge pollutants in excess of benchmarks and (2) that Carmel Marina has failed to implement BMPs adequate to bring its discharge of these and other pollutants in compliance with the General Permit. Carmel Marina's ongoing violations are discussed further below.

A. Carmel Marina Has Discharged Storm Water Containing Pollutants in Violation of the Permit.

Carmel Marina has discharged and continues to discharge storm water with unacceptable levels of Iron (Fe), Oil & Grease (O&G), Total Suspended Solids (TSS), pH and Specific Conductance (SC) in violation of the General Permit. These high pollutant levels have been documented during significant rain events, including the rain events indicated in the table of rain data attached hereto as Attachment A. Carmel Marina's Annual Reports and Sampling and Analysis Results confirm discharges of materials other than storm water and specific pollutants in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit:

1. Discharges of Storm Water Containing Iron (Fe) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
3/18/2011	SW-1	Fe	6.5 mg/L	1.0 mg/L
1/13/2011	SW-1	Fe	12.0 mg/L	1.0 mg/L
1/26/2010	SW-1	Fe	3.8 mg/L	1.0 mg/L

10/13/2009	SW-1	Fe	1.67 mg/L	1.0 mg/L
10/13/2009	SW-2	Fe	3.14 mg/L	1.0 mg/L
2/6/2009	SW-1 Loading Dock	Fe	2.7 mg/L	1.0 mg/L
2/6/2009	SW-2 Yard	Fe	1.2 mg/L	1.0 mg/L
11/26/2008	SW-2 Yard	Fe	1.35 mg/L	1.0 mg/L
1/4/2008	SW-1	Fe	4.24 mg/L	1.0 mg/L
1/4/2008	SW-2	Fe	3.46 mg/L	1.0 mg/L

2. Discharge of Storm Water Containing Oil & Grease at Concentration in Excess of EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
1/4/2008	SW-1	O&G	16 mg/L	15 mg/L

3. Discharges of Storm Water Containing Total Suspended Solids (TSS) at Concentration in Excess of Applicable EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
3/18/2011	SW-1	TSS	150 mg/L	100 mg/L
1/13/2011	SW-1	TSS	280 mg/L	100 mg/L
1/26/2010	SW-1	TSS	205 mg/L	100 mg/L
10/13/2009	SW-2	TSS	119 mg/L	100 mg/L
2/6/2009	SW-1	TSS	106 mg/L	100 mg/L
2/6/2009	SW-2	TSS	116 mg/L	100 mg/L
2/6/2009	SW-1 Yard	TSS	127 mg/L	100 mg/L
12/15/2009	SW-1	TSS	555 mg/L	100 mg/L

12/15/2009	SW-2	TSS	409 mg/L	100 mg/L
11/26/2008	SW-2 Yard	TSS	107 mg/L	100 mg/L
1/4/2008	SW-1	TSS	705 mg/L	100 mg/L
1/4/2008	SW-2	TSS	575 mg/L	100 mg/L
10/12/2007	SW-1	TSS	259 mg/L	100 mg/L
10/12/2007	SW-2	TSS	421 mg/L	100 mg/L

4. Discharges of Storm Water Containing Specific Conductance (SC) at Concentration in Excess of Proposed EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Proposed Benchmark Value
1/13/2011	SW-1	SC	890 µmhos/cm	200 µmhos/cm
1/26/2010	SW-1	SC	416 µmhos/cm	200 µmhos/cm
2/6/2009	SW-2 Yard	SC	645 µmhos/cm	200 µmhos/cm
12/15/2009	SW-1	SC	213 µmhos/cm	200 µmhos/cm
12/15/2009	SW-2	SC	213 µmhos/cm	200 µmhos/cm

5. Discharge of Storm Water Containing pH at Concentration in Excess of EPA Benchmark Value.

Date	Discharge Point	Parameter	Concentration in Discharge	Benchmark Value
1/26/2010	SW-1	pH	10.2 mg/L	6.0 – 9.0 s.u.

CSPA's investigation, including its review of Carmel Marina's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of

EPA's benchmark values and the State Board's proposed benchmark levels for specific conductivity, indicates that Carmel Marina has not implemented BAT and BCT at the Facility for its discharges of Iron (Fe), Oil & Grease (O&G), Total Suspended Solids (TSS), pH and Specific Conductance (SC) and other pollutants, in violation of Effluent Limitation B(3) of the General Permit. Carmel Marina was required to have implemented BAT and BCT by no later than October 1, 1992 or the start of its operations. Thus, Carmel Marina is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

CSPA is informed and believes that Carmel Marina has known that its storm water contains pollutants at levels exceeding EPA Benchmarks and other water quality criteria since at least April 25, 2007. CSPA alleges that such violations also have occurred and will occur on other rain dates, including during every single significant rain event that has occurred since April 25, 2007, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Carmel Marina has discharged storm water containing impermissible levels of Iron (Fe), Oil & Grease (O&G), Total Suspended Solids (TSS), pH and Specific Conductance (SC) and other unmonitored pollutants (e.g. aluminum (Al), copper (Cu), lead (Pb), zinc (Zn), and chemical oxygen demand (COD)) in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any pollutants from the Facility without the implementation of BAT/BCT constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Carmel Marina is subject to penalties for violations of the General Permit and the Act since April 25, 2007.

B. Carmel Marina Has Failed to Implement an Adequate Monitoring & Reporting Plan.

Section B of the General Industrial Storm Water Permit requires that dischargers develop and implement an adequate Monitoring and Reporting Plan by no later than October 1, 1992 or the start of operations. Sections B(3), B(4) and B(7) require that dischargers conduct regularly scheduled visual observations of non-storm water and storm water discharges from the Facility and to record and report such observations to the Regional Board. Section B(5)(a) of the General Permit requires that dischargers "shall collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. All storm water discharge locations shall be sampled." Section B(5)(c)(i) further requires that the samples shall be analyzed for total suspended solids, pH, specific conductance, and total organic carbon. Oil and grease may be substituted for total organic carbon. Section B(5)(c)(ii) of the General Permit further requires dischargers to analyze samples for all "[t]oxic chemicals and other pollutants that are likely to be present in storm water

discharges in significant quantities.” Section B(10) of the General Permit provides that “facility operators shall explain how the facility’s monitoring program will satisfy the monitoring program objectives of [General Permit] Section B.2.”

Based on its investigation, CSPA is informed and believes that Carmel Marina has failed to develop and implement an adequate Monitoring & Reporting Plan. First, based on its review of publicly available documents, CSPA is informed and believes that Carmel Marina has failed to collect storm water samples during at least two qualifying storms events, as defined by the General Permit, during each of the past five Wet Seasons. Second, based on its review of publicly available documents, CSPA is informed and believes that Carmel Marina has failed to conduct the monthly visual monitoring of storm water discharges and the quarterly visual observations of unauthorized non-storm water discharges required under the General Permit during each of the past five Wet Seasons. Third, based on its review of publicly available documents, CSPA is informed and believes that for the past five Wet Seasons Carmel Marina has failed to analyze samples for the pollutants that the General Permit requires Carmel Marina to analyze, based on its SIC Code 4953, which includes iron (Fe), and SIC Code 5093, which includes aluminum (Al), copper (Cu), iron (Fe), lead (Pb), zinc (Zn), and chemical oxygen demand (COD). Fourth, based on its review of publicly available documents, CSPA is informed and believes that for the past five Wet Seasons Carmel Marina has failed to analyze samples for other pollutants that are likely to be present in significant quantities in the storm water discharged from the Facility. Each of these failures constitutes a separate and ongoing violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Carmel Marina is subject to penalties for violations of the General Permit and the Act since April 25, 2007. These violations are set forth in greater detail below:

1. Carmel Marina Has Failed to Collect Storm Water Samples During at Least Two Rain Events In Each of the Last Five Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that Carmel Marina has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five Wet Seasons, as required by the General Permit. For example, CSPA notes that the Annual Report filed by Carmel Marina for the Facility for the 2010-2011 Wet Season reported that Carmel Marina analyzed samples of storm water discharged during two qualifying storm events that season. However, upon closer scrutiny it turns out that one storm sampled was not a qualifying storm event within the meaning of the General Permit. Similarly, in the 2009-2010 Annual Report, Carmel Marina sampled from a storm event that was not a qualifying storm event, either (discussed further below).

Carmel Marina reported in all five Wet Seasons (i.e., 2006-2007; 2007-2008; 2008-2009; 2009-2010; and 2010-2011 Wet Seasons), that the Facility sampled the first

qualifying storm event of the season, when in fact it only sampled the first storm of the season during one Wet Season. For example, Carmel Marina reported in its 2010-2011 Annual Report that it sampled the first qualifying storm event of the Wet Season, but Carmel Marina's first sample was collected on January 13, 2011. Based upon its review of publicly available rainfall data, CSPA is informed and believes that the first qualifying storm event of the 2010-2011 Wet Season occurred as early as Monday, October 17, 2010, when 0.19" of rain fell on the Facility. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

2. Carmel Marina Has Failed to Collect Storm Water Samples from Each Discharge Point During at Least Two Rain Events In Each of the Last Five Wet Seasons.

Based on its review of publicly available documents, CSPA is informed and believes that Carmel Marina has failed to collect storm water samples from all discharge points during at least two qualifying rain events at the Facility during each of the past five Wet Seasons. For example, in the 2010-2011 Wet Season, Carmel Marina only sampled from one discharge point, while in the 2009-2010 Wet Season, it sampled two discharge points. There is evidence in the Annual Reports that Carmel Marina has sampled up to five different locations over the last five years. Further, based on its investigation, CSPA is informed and believes that storm water discharges from the Facility at points other than the one sampling/discharge point currently designated by Carmel Marina. This failure to adequately monitor storm water discharges constitutes separate and ongoing violations of the General Permit and the Act.

3. Carmel Marina Has Failed to Conduct the Monthly Wet Season Observations of Storm Water Discharges Required by the General Permit.

The General Permit requires dischargers to "visually observe storm water discharges from one storm event per month during the Wet Season (October 1 – May 30)." General Permit, Section B(4)(a). As evidenced by the entries on Form 4 Monthly Visual Observations contained in Carmel Marina's annual reports for the last five Wet Seasons, CSPA is informed and believes that Carmel Marina has failed to comply with this requirement of the General Permit.

Specifically, Carmel Marina failed to conduct monthly visual observations of discharges from qualifying storm events for most months during any of the past five Wet Seasons. Instead, Carmel Marina documented its visual observations of storm water that discharged during non-qualifying storm events or on dates during which no rain fell on the Facility, for most months during the entire Wet Season of each of the past five years (discussed further below). However, based on publicly available rainfall data, CSPA is informed and believes that there were many qualifying storm events during each of these Wet Seasons that Carmel Marina could have observed.

For example, Carmel Marina reported in its 2010-2011 Annual Report that it observed a qualifying storm event on Wednesday December 22, 2010. However, CSPA is informed and believes that this could not possibly be true because 0.27" of rain fell on the Facility two days prior, on December 20, 2010, likely making that December 20th storm a qualifying storm event and disqualifying all storm events for the next three days. Carmel Marina's failure to conduct this required monthly Wet Season visual monitoring extends back to at least April 25, 2007. Carmel Marina's failure to conduct this required monthly Wet Season visual monitoring has caused and continues to cause multiple, separate and ongoing violations of the General Permit and the Act.

4. Carmel Marina Is Subject to Penalties for Its Failure to Implement an Adequate Monitoring & Reporting Plan Since April 25, 2007.

CSPA is informed and believes that publicly available documents demonstrate Carmel Marina's consistent and ongoing failure to implement an adequate Monitoring Reporting Plan in violation of Section B of the General Permit. For example, while in its 2010-2011 Annual Report Carmel Marina reported having collected samples of storm water discharged during two qualifying storm events, only one storm event was a qualifying storm event within the meaning of the General Permit. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on March 18, 2011 was not a qualifying storm event because enough rain fell on the Facility two days prior to likely result in a discharge of storm water from the Facility, thereby invalidating the March 18th storm as a qualifying storm event. Specifically, Carmel Marina sampled a rain event on March 18, 2011 that produced 0.73" of rainfall on the Facility. However, two days prior, on Wednesday, March 16, 2011, 0.08" of rain fell on the Facility. As Carmel Marina sampled a storm event on January 13, 2011 during which 0.04" of rain fell on the Facility, it is likely that the March 16th storm event also produced enough rain for a discharge. Therefore, the March 16th storm event likely renders any storm occurring for three days afterwards a non-qualifying storm event.

Additionally, Carmel Marina is in violation of the General Permit's requirement that the testing method employed in laboratory analyses of pollutant concentrations present in storm water discharged from the Facility be "adequate to satisfy the objectives of the monitoring program." General Permit Section B.10.a.iii. The Regional Board has

determined that the appropriate laboratory test method to employ when analyzing storm water samples for the presence and concentration of iron is EPA method 200.8. Additionally, the Regional Board has determined that the appropriate detection limit that should be applied when using EPA method 200.8 is 0.005 mg/L.

However, as demonstrated by Carmel Marina's annual report filed for each of the last five Wet Seasons (e.g., 2006-2007; 2007-2008; 2008-2009; 2009-2010; 2010-2011), the test method employed by the laboratory utilized by Carmel Marina to analyze the concentration of iron in the storm water discharged from its Facility was not EPA method 200.8, but rather, EPA method 200.7 or 3111B. In addition, the laboratory employed by Carmel Marina to analyze the storm water sample collected for both samples applied an inappropriately high detection limit of 0.05 mg/L.

Carmel Marina is in violation of the General Permit for failing to employ laboratory test methods and detection limits that are adequate to, among other things, "ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in this General Permit." General Permit Section B.2.a. ("Monitoring Program Objectives"). Accordingly, consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Carmel Marina is subject to penalties for these violations of the General Permit and the Act since April 25, 2007.

C. Carmel Marina Has Failed to Implement BAT and BCT.

Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). CSPA's investigation indicates that Carmel Marina has not implemented BAT and BCT at the Facility for its discharges of Iron (Fe), Oil & Grease (O&G), Total Suspended Solids (TSS), pH and Specific Conductance (SC) and other unmonitored pollutants in violation of Effluent Limitation B(3) of the General Permit.

To meet the BAT/BCT requirement of the General Permit, Carmel Marina must evaluate all pollutant sources at the Facility and implement the best structural and non-structural management practices economically achievable to reduce or prevent the discharge of pollutants from the Facility. Based on the limited information available regarding the internal structure of the Facility, CSPA believes that at a minimum Carmel Marina must improve its housekeeping practices, store materials that act as pollutant sources under cover or in contained areas, treat storm water to reduce pollutants before discharge (e.g., with filters or treatment boxes), and/or prevent storm water discharge altogether. Carmel Marina has failed to adequately implement such measures.

Carmel Marina was required to have implemented BAT and BCT by no later than October 1, 1992. Therefore, Carmel Marina has been in continuous violation of the BAT

and BCT requirements every day since October 1, 1992, and will continue to be in violation every day that it fails to implement BAT and BCT. Carmel Marina is subject to penalties for violations of the General Permit and the Act occurring since April 25, 2007.

D. Carmel Marina Has Failed to Develop and Implement an Adequate Storm Water Pollution Prevention Plan.

Section A(1) and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to Water Quality Order No. 97-03-DWQ to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 9, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must also include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). Receiving Water Limitation C(3) of the Order requires that dischargers submit a report to the appropriate Regional Water Board that describes the BMPs that are currently being implemented and additional BMPs that will be implemented to prevent or reduce the discharge of any pollutants causing or contributing to the exceedance of water quality standards.

CSPA's investigation and review of publicly available documents regarding conditions at the Facility indicate that Carmel Marina has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. Carmel Marina has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Accordingly, Carmel Marina has been in continuous violation of Section A(1) and Provision E(2) of the General Permit every day since October 1, 1992, and will continue to be in violation every day that it fails to develop and implement an effective SWPPP. Carmel Marina is subject to penalties for violations of the General Permit and the Act occurring since April 25, 2007.

E. Carmel Marina Has Failed to Address Discharges Contributing to Exceedances of Water Quality Standards.

Receiving Water Limitation C(3) requires a discharger to prepare and submit a report to the Regional Board describing changes it will make to its current BMPs in order to prevent or reduce the discharge of any pollutant in its storm water discharges that is causing or contributing to an exceedance of water quality standards. Once approved by the Regional Board, the additional BMPs must be incorporated into the Facility's SWPPP. The report must be submitted to the Regional Board no later than 60-days from the date the discharger first learns that its discharge is causing or contributing to an exceedance of an applicable water quality standard. Receiving Water Limitation C(4)(a). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

As indicated above, Carmel Marina is discharging elevated levels of Iron (Fe), Oil & Grease (O&G), Total Suspended Solids (TSS), pH and Specific Conductance (SC) and other unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. For each of these pollutant exceedances, Carmel Marina was required to submit a report pursuant to Receiving Water Limitation C(4)(a) within 60-days of becoming aware of levels in its storm water exceeding the EPA Benchmarks and applicable water quality standards.

Based on CSPA's review of available documents, Carmel Marina was aware of high levels of these pollutants prior to April 25, 2007. Likewise, Carmel Marina has generally failed to file reports describing its noncompliance with the General Permit in violation of Section C(11)(d). Lastly, the SWPPP and accompanying BMPs do not appear to have been altered as a result of the annual evaluation required by Section A(9). Carmel Marina has been in continuous violation of Receiving Water Limitation C(4)(a) and Sections C(11)(d) and A(9) of the General Permit every day since April 25, 2007, and will continue to be in violation every day it fails to prepare and submit the requisite reports, receives approval from the Regional Board and amends its SWPPP to include

approved BMPs. Carmel Marina is subject to penalties for violations of the General Permit and the Act occurring since April 25, 2007.

F. Carmel Marina Has Failed to File Timely, True and Correct Reports.

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

CSPA's investigation indicates that Carmel Marina has submitted incomplete Annual Reports and purported to comply with the General Permit despite significant noncompliance at the Facility. For example, Carmel Marina reported in every Annual Report filed for the past five Wet Seasons (i.e., 2006-2007; 2007-2008; 2008-2009; 2009-2010; and 2010-2011) that it observed storm water discharge occurring during the first storm of every Wet Season. However, as discussed above, based on CSPA's review of publicly available rainfall data, CSPA believes this cannot possibly be true.

Further, Carmel Marina failed to sample from qualifying storm events in six out of eight storm water samples collected during the last five Wet Seasons. For example, as discussed above, in 2010-2011, Carmel Marina sampled from a storm event on March 18, 2011 that was not a qualifying storm event. Further, in the 2009-2010 Annual Report, Carmel Marina reported that it sampled a qualifying storm event on January 26, 2010. Based on its review of publicly available rainfall data, CSPA is informed and believes that the storm that occurred at the Facility on January 26, 2010 was not a qualifying storm event because enough rain fell on the Facility three days prior to likely result in a discharge of storm water from the Facility, thereby invalidating the January 26, 2010 storm as a qualifying storm event. Specifically, 0.53" of rain fell on the Facility on Saturday, January 23, 2010. Additionally, on Friday, January 22, 2010, i.e., two working days prior, 0.83" of rain fell on the Facility. Either way, the storm event that occurred at the Facility on January 26, 2010 was not a qualifying storm event.

Further, Carmel Marina failed to comply with the monthly visual observations of storm water discharges requirement for every single Annual Report filed for the Facility for each of the last five years. In the 2009-2010 Annual Report, Carmel Marina only observed a single qualifying storm event within the meaning of the General Permit. For example, Carmel Marina reported that it observed a qualifying storm event on January 18, 2010. However, based on publicly available rainfall data, CSPA is informed and believes that this cannot possibly be true. On Sunday, January 17, 2010, 0.26" of rain fell on the Facility, likely invalidating the storm observed on January 18th. In the 2010-2011 Annual Report, Carmel Marina reported that it observed discharge from a qualifying storm event on Wednesday December 22, 2010. However, based on publicly available

rainfall data, CSPA is informed and believes that this cannot possibly be true. Two days prior to December 22, on Monday, December 20, 0.27" of rain fell on the Facility, thereby invalidating the December 22, 2010 storm as a qualifying storm event.

These are only a few examples of how Carmel Marina has failed to file completely true and accurate reports. As indicated above, Carmel Marina has failed to comply with the Permit and the Act consistently for at least the past five years; therefore, Carmel Marina has violated Sections A(9)(d), B(14) and C(9) & (10) of the Permit every time Carmel Marina submitted an incomplete or incorrect annual report that falsely certified compliance with the Act in the past years. Carmel Marina's failure to submit true and complete reports constitutes continuous and ongoing violations of the Permit and the Act. Carmel Marina is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since April 25, 2007.

IV. Persons Responsible for the Violations.

CSPA puts USA Waste of California, Inc., Jay Ramos, Felipe Melchor, Eddie Pettit, and Elaina Smith on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts USA Waste of California, Inc., Jay Ramos, Felipe Melchor, Eddie Pettit, and Elaina Smith on notice that it intends to include those persons in this action.

V. Name and Address of Noticing Party.

Our name, address and telephone number is as follows: California Sportfishing Protection Alliance, Bill Jennings, Executive Director; 3536 Rainier Avenue, Stockton, CA 95204; Phone: (209) 464-5067.

VI. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

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Emily J. Brand
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VII. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act USA Waste of California, Inc., Jay Ramos, Felipe Melchor, Eddie Pettit, and Elaina Smith to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against USA Waste of California, Inc., Jay Ramos, Felipe Melchor, Eddie Pettit, and Elaina Smith and their agents for the above-referenced violations upon the expiration of the 60-day notice period. If you wish to pursue remedies in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Jennings", is written over a horizontal line.

Bill Jennings, Executive Director
California Sportfishing Protection Alliance

SERVICE LIST

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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Jared Blumenfeld
Administrator, U.S. EPA – Region 9
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ATTACHMENT A
Notice of Intent to File Suit, Carmel Marina (Castroville, CA)
Significant Rain Events,* April 25, 2007 – April 25, 2012

May 02 2007	Feb. 16 2009	Mar. 10 2010	Mar. 06 2011
May 04 2007	Feb. 17 2009	Mar. 12 2010	Mar. 13 2011
Oct 12 2007	Feb. 21 2009	Mar. 30 2010	Mar. 16 2011
Oct 16 2007	Feb. 22 2009	Mar. 31 2010	Mar. 18 2011
Oct 19 2007	Feb. 23 2009	April 04 2010	Mar. 19 2011
Nov 10 2007	Feb. 26 2009	April 05 2010	Mar. 20 2011
Nov 11 2007	Mar. 01 2009	April 11 2010	Mar. 21 2011
Dec. 06 2007	Mar. 02 2009	April 12 2010	Mar. 22 2011
Dec. 07 2007	Mar. 03 2009	April 20 2010	Mar. 23 2011
Dec. 17 2007	Mar. 04 2009	April 21 2010	Mar. 24 2011
Dec. 18 2007	Mar. 21 2009	April 27 2010	Mar. 25 2011
Dec. 20 2007	Mar. 22 2009	April 28 2010	Mar. 26 2011
Jan 03 2008	April 07 2009	May 09 2010	Apr 13 2011
Jan 04 2008	April 08 2009	May 17 2010	Apr 20 2011
Jan 05 2008	April 09 2009	May 25 2010	Apr 24 2011
Jan 06 2008	April 23 2009	Aug 08 2010	May 07 2011
Jan 07 2008	May 01 2009	Oct. 17 2010	May 14 2011
Jan 09 2008	May 05 2009	Oct. 22 2010	May 15 2011
Jan 21 2008	Oct. 13 2009	Oct. 23 2010	May 16 2011
Jan 22 2008	Oct. 19 2009	Oct. 24 2010	May 17 2011
Jan 23 2008	Dec. 06 2009	Oct. 29 2010	May 28 2011
Jan 24 2008	Dec. 07 2009	Nov. 07 2010	Jun 03 2011
Jan 25 2008	Dec. 10 2009	Nov. 19 2010	Jun 04 2011
Jan 26 2008	Dec. 11 2009	Nov. 20 2010	Jun 28 2011
Jan. 27 2008	Dec. 12 2009	Nov. 21 2010	Jul 12 2011
Jan. 28 2008	Dec. 21 2009	Nov. 23 2010	Oct 03 2011
Jan. 29 2008	Dec. 26 2009	Nov. 27 2010	Oct 04 2011
Jan. 31 2008	Dec. 28 2009	Dec. 04 2010	Oct 05 2011
Feb 02 2008	Jan. 12 2010	Dec. 05 2010	Oct 06 2011
Feb 03 2008	Jan. 13 2010	Dec. 10 2010	Nov 03 2011
Feb 19 2008	Jan. 17 2010	Dec. 14 2010	Nov 04 2011
Feb 20 2008	Jan. 18 2010	Dec. 16 2010	Nov 05 2011
Feb 21 2008	Jan. 19 2010	Dec. 17 2010	Nov 06 2011
Feb 22 2008	Jan. 20 2010	Dec. 18 2010	Nov 11 2011
Feb 23 2008	Jan. 21 2010	Dec. 19 2010	Nov 19 2011
Feb 24 2008	Jan. 22 2010	Dec. 20 2010	Nov 20 2011
Mar 13 2008	Jan. 23 2010	Dec. 22 2010	Jan 20 2012
Mar 15 2008	Jan. 26 2010	Dec. 25 2010	Jan 21 2012
Mar. 28 2008	Jan. 29 2010	Dec. 28 2010	Jan 22 2012
Apr. 02 2008	Feb 04 2010	Dec. 29 2010	Jan 23 2012
Apr. 22 2008	Feb 05 2010	Jan. 01 2011	Jan 24 2012
Apr. 23 2008	Feb. 06 2010	Jan. 02 2011	Jan 25 2012
Jan. 02 2009	Feb. 08 2010	Jan. 13 2011	Feb 13 2012
Jan. 21 2009	Feb. 09 2010	Jan. 29 2011	Feb 15 2012
Jan. 22 2009	Feb. 12 2010	Jan. 30 2011	Feb 29 2012
Jan. 23 2009	Feb. 20 2010	Feb. 15 2011	Mar 13 2012
Feb. 05 2009	Feb. 21 2010	Feb. 16 2011	Mar 14 2012
Feb. 06 2009	Feb. 23 2010	Feb. 17 2011	Mar 16 2012
Feb. 08 2009	Feb. 24 2010	Feb. 18 2011	Mar 17 2012
Feb. 11 2009	Feb. 26 2010	Feb. 19 2011	Mar 18 2012
Feb. 12 2009	Feb. 27 2010	Feb. 24 2011	Mar 24 2012
Feb. 13 2009	Mar. 02 2010	Feb. 25 2011	Mar 25 2012
Feb. 14 2009	Mar. 03 2010	Feb. 26 2011	Mar 27 2012
Feb. 15 2009	Mar. 08 2010	Mar. 02 2011	Mar 31 2012

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.

ATTACHMENT A
Notice of Intent to File Suit, Carmel Marina (Castroville, CA)
Significant Rain Events,* April 25, 2007 – April 25, 2012

Apr	10	2012
Apr	11	2012
Apr	12	2012
Apr	13	2012

* Dates gathered from publicly available rain and weather data collected at stations located near the Facility.